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10 Proposed Attorneys for Debtors and Debtors-in-
11 Possession, Scoobeez, Scoobeez Global, Inc., and
12 Scoobur, LLC

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

13 In re
14 *SCOOBEEZ, et al.*¹
15 Debtors and Debtors in
16 Possession.

17 Affects:

- 18 ■ All Debtors
19 □ Scoobeez, ONLY
20 □ Scoobeez Global, Inc., ONLY
21 □ Scoobur LLC, ONLY
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23
24
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Case Nos.: 2:19-bk-14989; 2:19-bk-14991;
2:19-bk-14997

Chapter 11

**DEBTORS' SUPPLEMENTAL BRIEF IN
SUPPORT OF APPLICATION FOR AN
ORDER AUTHORIZING AND
APPROVING (I) APPOINTING BRIAN
WEISS AS CHIEF RESTRUCTURING
OFFICER OF THE DEBTORS NUNC
PRO TUNC TO MAY 16, 2019**

Hearing:

Date: June 6, 2019
Time: 10:00 a.m.
Place: Courtroom 1375
U.S. Bankruptcy Court
255 East Temple Street
Los Angeles, CA 90012

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows:
Scoobeez (6339); Scoobeez Global, Inc. (9779); and Scoobur, LLC (0343). The Debtors' address is 3463 Foothill
Boulevard, Glendale, California 91214.

1 **TO THE HONORABLE JULIA W. BRAND, UNITED STATES BANKRUPTCY JUDGE,**
2 **THE OFFICE OF THE UNITED STATES TRUSTEE, SECURED CREDITORS,**
3 **OFFICIAL COMMITTEE OF UNSECURED CREDITORS, AND ALL INTERESTED**
4 **PARTIES AND/OR THEIR COUNSEL OF RECORD:**

5 Debtors and debtors-in-possession Scoobeez, Scoobeez Global, Inc. and Scoobur, LLC
6 (collectively, the “Debtors”) submit this Supplemental Brief in support of their Application for an
7 Order Authorizing and Approving (I) Appointing Brian Weiss as Chief Restructuring Officer of
8 the Debtors *Nunc Pro Tunc* to May 16, 2019 (the “CRO Application”).² In support of the CRO
9 Application, the Debtors respectfully state as follows:

10 **I. BACKGROUND**

11 On May 16, 2019, the Debtors filed the CRO Application.

12 On May 23, 2019, the UST filed his Objection to Application for an Order Authorizing
13 and Approving (1) Appointment of Brian Weiss as Chief Restructuring Officer of the Debtors
14 *Nunc Pro Tunc* to May 16, 2019 (the “UST Opposition”). Also on May 23, 2019, the Official
15 Committee of Unsecured Creditors (the “Committee”) filed its Opposition to Debtors’
16 Application for an Order Authorizing and Approving (I) Appointing Brian Weiss as Chief
17 Restructuring Officer of the Debtors *Nunc Pro Tunc* to May 16, 2019 (the “Committee
18 Opposition” and collectively with the UST Opposition, the “Oppositions”).

19 On May 28, 2019, the Debtors filed their Reply in support of their Application for an
20 Order Authorizing and Approving (I) Appointing Brian Weiss as Chief Restructuring Officer of
21 the Debtors *Nunc Pro Tunc* to May 16, 2019 (the “Debtors’ Reply”). In the Debtors’ Reply, the
22 Debtors addressed the arguments made by the UST and the Committee in the Oppositions.

23 On May 31, 2019, the UST filed his Response to Debtors’ Reply in Support of
24 Application for an Order Authorizing and Approving (I) Appointing Brian Weiss as Chief
25 Restructuring Officer of the Debtors *Nunc Pro Tunc* to May 16, 2019 and Request for
26 Continuance of Hearing (the “UST Supplemental Brief”). Also on May 31, 2019, the Committee
27 filed its Limited Opposition to Debtors’ Application for an Order Authorizing and Approving (I)

28 _____
² Capitalized terms used but not defined herein shall have the meaning given them in the Application.

1 Appointing Brian Weiss as Chief Restructuring Officer of the Debtors *Nunc Pro Tunc* to May 16,
2 2019 (the “Committee Supplemental Brief”).

3 For the reasons set forth below, in the Application, and in the Debtors’ Reply, the Debtors
4 submit that the Court should grant the Application and that any opposition to the Application
5 should be overruled.

6 **II. DISCUSSION**

7 As the above makes clear, there already has been significant briefing on the Application.
8 The Debtors will not burden the Court with extensive, repetitive argument. Rather, the Debtors
9 file this Supplemental Brief for the limited purposes of (a) responding to any new arguments
10 raised by the UST in the UST Supplemental Brief³ and (b) emphasizing certain arguments that
11 they believe compel overruling any opposition to the Application.

12 **A. The Debtors’ Primary Creditor Constituencies – Hillair and the Committee –**
13 **Either Support, or are Expected to Support, the Appointment of the CRO,**
14 **and Oppose the Appointment of a Chapter 11 Trustee.**

15 Based upon the Debtors’ extensive work to address the parties’ issues, the Debtors’
16 primary creditor constituencies, whose money is at stake in these chapter 11 proceedings, either
17 support the appointment of the CRO, or are expected to imminently support the appointment of
18 the CRO. For its part, in the most recent version of the proposed Cash Collateral Stipulation,
19 Hillair has made the appointment of an independent CRO, and the reporting of the Debtors’
20 officers to such CRO, a condition to its consent to the Debtors’ continued use of cash collateral.
21 See Second Stipulation Between the Debtors and Hillair Capital Management for (1)
22 Authorization to Use Cash Collateral on an Interim Basis; and (2) Appointment of a Chief
23 Restructuring Officer. And while the Committee initially objected to the retention of the CRO,
24 the Committee, the Debtors and Hillair are on the cusp of a resolution of the Committee’s
25

26
27 ³ In the Committee Supplemental Brief, the Committee notes that it is “in ongoing discussions in an attempt to
28 resolve the Committee’s concerns about the Application as outlined in the Opposition” and “at this time the
Committee stands on its Opposition.” See Committee Supplemental Brief, at p. 2. Thus, the Debtors will not
address the Committee Supplemental Brief in this Supplemental Brief.

1 objections. Moreover, the Debtors and Hillair oppose the appointment of a chapter 11 trustee, and
2 upon the expected imminent resolution of the Committee's issues, the Committee will as well.
3 Thus, the UST is the only party still pursuing an objection to the Debtors' retention of the CRO.
4 And while the UST's views are certainly entitled to consideration by the Court, the Debtors
5 submit that, given that the Debtors' primary creditor constituencies desire the appointment of the
6 CRO, along with the other factors set forth below, appointment of a CRO is appropriate here.

8 **B. The Debtors Have Addressed Any Corporate Governance Concerns**
9 **Expressed by the UST.**

10 In the UST Supplemental Brief, the UST expressed concern that the board of directors of
11 Scoobeez Global, Inc. consisted of one person – Mr. Ohanessian – and that the CRO would report
12 to that board of directors. See UST Supplemental Brief, at p. 3-4. But this should no longer be a
13 concern of the UST. In the resolution referenced above that the Debtors have tentatively reached
14 with the Committee and Hillair, going forward the Debtors' board will consist of (i) the CRO, (ii)
15 Daniel Harrow, an independent turnaround expert who has no previous relationship with the
16 Debtors, and (iii) a member designated by the Committee and accepted by the Debtors who has
17 similarly represented that he has no previously relationship with the Committee or its members,
18 who sought his appointment, nor creditors. Thus, the independent CRO will be reporting to a
19 completely independent board. Moreover, the officers will report to the CRO.

21 **C. The CRO and the Debtors' Financial Advisors Will Avoid Duplication of**
22 **Efforts.**

23 In the UST Supplemental Brief, the UST expresses concern that "the opportunity for
24 duplication is obvious between the CRO and Conway MacKenzie." See UST Supplemental
25 Brief, at p. 10. But the "opportunity" for duplication of efforts is not the same thing as actual
26 duplication of efforts. The Debtors, the CRO, and Conway are cognizant of the concerns
27 expressed by the UST (and others) regarding potential duplication of effort, and will make every
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1 effort to avoid duplication of efforts. To the extent that the UST (or others) believe that the
2 Debtors, the CRO and Conway have fallen short of their pledges to avoid duplication of efforts,
3 such can be addressed when the CRO and/or Conway submit their fees for review, and objection
4 if deemed appropriate, by the parties and/or the Court.

5
6 **D. The Court Should Not Continue the Hearing on the Application to Permit the**
7 **UST to File a Motion for Appointment of a Chapter 11 Trustee**

8 In the UST Supplemental Brief, the UST again argues that the appointment of a chapter
9 11 trustee is appropriate here. More specifically, the UST argues that under section 1104(a)(1) of
10 the Bankruptcy Code, the Court need only find “fraud, dishonesty, incompetence, or gross
11 mismanagement” by “current management” of the Debtors in order to appoint a chapter 11
12 trustee. See UST Supplemental Brief, at p. 6. But these cases were filed five weeks ago, and the
13 UST still has not presented any admissible evidence to support the appointment of a chapter 11
14 trustee. What’s more, if the CRO Application is granted, the Debtors will have a new person (the
15 CRO) in charge of the Debtors’ management, not to mention a new, independent board of
16 directors to which the CRO will report.

17
18 The UST also argues that appointment of a chapter 11 trustee is appropriate under section
19 1104(a)(2) of the Bankruptcy Code because section 1104(a)(2) permits the appointment of a
20 chapter 11 trustee if the “practical reality” is that a trustee is needed. See UST Supplemental
21 Brief, at p. 7. The Debtors will not respond here to every point the UST makes with respect to
22 this argument. However, the Debtors submit that the “practical reality” here is that the Debtors
23 have taken the actions discussed above, in communication and expected resolution with their
24 primary creditor constituencies, to satisfy such creditors that whatever issues were of concern to
25 them prior to the commencement of these cases are not continuing going forward. As
26 restructured internally, the Debtors are trustworthy and will be even more so if the CRO is
27 appointed. Under the new management structure, the Debtors have a high prospect of a
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1 successful reorganization. The creditors have expressed significant confidence in the present
2 management. Most recently, representatives from Hillair were extremely complimentary of
3 George Voskanian after meeting with him on June 3, 2019. The Debtors and their economic
4 stakeholders ought to be given an opportunity to let their efforts bear fruit without the imposition
5 of the extraordinary remedy of the appointment of a chapter 11 trustee.
6

7 The appointment of a chapter 11 trustee would have a fatal impact on this business,
8 particularly given that the Debtors have one customer (Amazon) – an incredible business
9 relationship that Debtors would stand to lose upon the appointment of a trustee. Balancing the
10 equities, the significant risk associated with losing Amazon’s business (which would
11 unequivocally sound the death knell for the Debtors) is not even remotely outweighed by any
12 benefit to be served by a trustee (which is essentially non-existent, especially if a CRO is
13 appointed).
14

15 In any event, the Court should not delay the hearing on the CRO Application to permit the
16 UST to file a motion for the appointment of a chapter 11 trustee. It is imperative that the Debtors
17 be allowed to focus on running their business and negotiating with their creditor constituencies
18 over the terms of a chapter 11 plan and exit from bankruptcy. The appointment of a chapter 11
19 trustee, which the Debtors (and, likely, others) would object to, would only serve to significantly
20 disrupt - and lengthen, likely by weeks if not months - these chapter 11 cases, and add expense.
21 If, at some point in the future, after the CRO and independent board have had a chance to do their
22 jobs, the UST believes the appointment of a chapter 11 trustee is still warranted, he can file a
23 motion at that time.
24

25 **III. CONCLUSION**

26
27 Based upon the foregoing, the Debtors respectfully request that the Court enter an order
28 authorizing and approving the retention of Weiss as Chief Restructuring Officer of the Debtors

1 *Nunc Pro Tunc* to May 16, 2019; overruling the UST Opposition and the Committee Opposition;
2 and granting such other and further relief as the Court deems just and proper.

3 Dated: June 4, 2019

Respectfully submitted,

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5 **FOLEY & LARDNER LLP**

6 By: /s/ Ashley M. McDow

Ashley M. McDow

7 John A. Simon (admitted Pro Hac Vice)

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13 Proposed Attorneys for Scoobeez, Scoobeez Global,
14 Inc., and Scoobur, LLC, Debtors and Debtors-in-
Possession

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
Foley & Lardner LLP, 555 South Flower Street, Suite 3300, Los Angeles, CA 90072-2411

A true and correct copy of the foregoing document entitled (*specify*): **DEBTORS' SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICATION FOR AN ORDER AUTHORIZING AND APPROVING (I) APPOINTING BRIAN WEISS AS CHIEF RESTRUCTURING OFFICER OF THE DEBTORS NUNC PRO TUNC TO MAY 16, 2019**

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 06/04/2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 06/04/2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Honorable Julia W. Brand

United States Bankruptcy Court

Central District of California

Edward R. Roybal Federal Building and Courthouse

255 E. Temple Street, Suite 1382

Los Angeles, CA 90012

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

06/04/2019

Date

Ashley M. McDow

Printed Name

/s/ Ashley M. McDow

Signature